

INITIAL STATEMENT OF REASONS

California Alternative Energy and Advanced Transportation Financing Authority

Sections 10031, 10032, 10033, 10034, 10035, and 10036 Title 4, Division 13, Article 2 of the California Code of Regulations.

INTRODUCTION

These regulations implement, interpret, and make specific Public Resources Code Section 26011.8, to enable the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) to administer the Sales and Use Tax Exclusion (“STE”) Program (the “Program”). The purpose of the Program is to promote the creation of California-based manufacturing, California-based jobs, and the reduction of greenhouse gas emissions, air and water pollution, and energy consumption consistent with the statute.

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the Authority to provide financial assistance, as defined, to Participating Parties, as defined in Public Resources Code Section 26003(a)(7), for Alternative Source, Advanced Transportation, Advanced Manufacturing, and recycling Projects, also known as the Sales and Use Tax Exclusion Program. (See Public Resources Code (“PRC”) Sections 26003(a) and 26011.8(b), and Revenue and Taxation Code Section 6010.8.)

Existing law authorizes CAEATFA to provide a sales and use tax exclusion to certain types of manufacturers and recyclers to promote the creation of California-based manufacturing, California-based jobs, Advanced Manufacturing, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption. (PRC Section 26011.8(a).)

Existing law specifies criteria by which CAEATFA shall evaluate Project Applications, including the extent to which the Project will create new, permanent full-time jobs in California; the extent of unemployment in the area in which the Project is proposed to be located; and, to the extent feasible, the extent to which the Project, or the product produced by the Project, results in a reduction of greenhouse gases, a reduction in air or water pollution, an increase in energy efficiency, or a reduction in energy consumption, beyond what is required by federal or state law or regulation; and any other factors the Authority deems appropriate in accordance with Section 26011.8. (PRC Section 26011.8(d).)

In October 2019, Governor Newsom signed into law AB 176 (Cervantes, Chapter 672, Statutes of 2019), which adds to the Application evaluation criteria the extent to which a Project will result in the loss of permanent, full-time jobs in California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained. Existing law also limits the amount of STE CAEATFA may grant for each calendar year to \$100 million. (PRC Section 26011.8(h).)

Existing Program regulations establish eligibility and evaluation criteria by which Applications are reviewed in accordance with PRC Section 26011.8(d). Current Program regulations provide that CAEATFA will accept Applications on a rolling, first-come-first-serve basis until the Program becomes oversubscribed and that the Board may limit the number of meetings at which Applications will be considered. As part of the Application, existing Program regulations require Applicants to submit information on the Applicant's business, the proposed Project, and the product(s) to be manufactured.

Current STE Program regulations limit Applicants to receiving \$20 million in STE per calendar year based on the average statewide sales and use tax rate at the time of application. If any STE from the \$100 million cap is available at the end of the calendar year after all Applications submitted for that calendar year have been considered, capped Applicants are able to submit a revised Application for consideration by CAEATFA to seek additional STE. Current STE Program regulations require that any STE remaining from the \$100 million cap be split evenly among Applicants CAEATFA approved to receive additional STE.

Current STE Program regulations establish a competitive process whereby Applications are ranked based on specific criteria to determine the order of priority for consideration by CAEATFA if the Program becomes oversubscribed in a given month.

Existing STE Program regulations require approved Applicants to execute a Regulatory Agreement with CAEATFA that sets out the terms of using the award. Current STE Program regulations require approved Applicants to purchase at least 15% of the total Qualified Property amount approved within one year of approval and do not provide the CAEATFA Board the ability to waive or extend this requirement.

Existing STE Program regulations require Applicants to pay fees to cover the cost of reviewing Applications and administering the Program.

For the first time in STE Program history, in 2019, CAEATFA exhausted the annual \$100 million STE cap by the July CAEATFA Board meeting rather than the December Board meeting of that year. Also for the first time in 2019, the Program's competitive criteria were used to determine which Applicants would be considered. Given the limited resources and recent competitive nature of the STE Program, the CAEATFA Board requested that CAEATFA staff ("Staff") re-evaluate Program goals and priorities to determine how best to effectuate the purpose of the Program. Additionally, Staff had been identifying lessons learned throughout Program implementation.

At the November 19, 2019, CAEATFA Board meeting, Staff presented proposed amended regulations reflecting feedback from the CAEATFA Board and Staff's stakeholder outreach. The modified regulations made incremental changes to address more immediate STE Program priorities at the time, while reserving some of the more complex issues for when Staff could take more time to solicit input and thoughtfully consider the issues and policy trade-offs.

After the initial emergency regulations were approved by the Office of Administrative Law and became effective on December 16, 2019, CAEATFA began accepting STE Applications for the

2020 calendar year. By the first application deadline, the STE Program was oversubscribed for the 2020 calendar year. In March 2020, the CAEATFA Board approved 18 Applications, fully awarding the \$100 million in STE. Six Applicants requesting a total of approximately \$10 million in STE remained on the waitlist.

Subsequently, the COVID-19 pandemic spread throughout the world, affecting purchase timeframes, financing, feedstock supply, revenue, construction, and operations for previously approved Applicants. However, the ultimate market impact of the COVID-19 pandemic remains unknown.

Given the significant STE Program and market changes since the December 2019 emergency regulations first took effect, CAEATFA conducted additional stakeholder outreach and discussions to determine what lessons learned could be applied to the regulations going forward. Proposed amended regulations reflecting feedback from the CAEATFA Board and Staff's stakeholder outreach were presented and approved by the CAEATFA Board at the September 15, 2020, CAEATFA Board meeting. The December 2019 emergency regulations expired on October 15, 2020.

The September 2020 proposed emergency regulations addressed the STE Program's oversubscription for the last three years, addressed the unprecedented economic impact of the COVID-19 pandemic, and incorporated the lessons learned from Program implementation. After the September 2020 emergency regulations took effect on November 4, 2020, CAEATFA began accepting Applications for consideration in calendar year 2021. CAEATFA received 31 Applications by the first deadline of November 20, 2020, for consideration in January 2021, requesting over \$102 million in STE. Given the number of Applications received and the time needed to implement the different pools of STE and the competitive process, the first Applications were considered at the March 2021 CAEATFA Board meeting.

At the March 2021 CAEATFA Board meeting, the CAEATFA Board approved 29 Applications, leaving an estimated STE value of \$7,020,745 in the STE Program's general pool. The Applications considered in March resulted in an oversubscription of the \$20 million in STE set aside for small projects requesting \$2 million or less in STE and a competitive process for that particular pool. The general pool of STE was not oversubscribed based on the complete Applications received by the deadline for consideration, and, therefore, all Applications under that pool were brought before the CAEATFA Board in order of receipt. Subsequently, one of the Applicants approved in March 2021 did not move forward with a Regulatory Agreement with CAEATFA, restoring \$433,011 in STE to the small-project set-aside.

After the March 2021 CAEATFA Board meeting, CAEATFA had eight Applications in the queue for the remaining 2021 calendar year STE. The remaining STE was awarded to three Applicants at the May 2021 CAEATFA Board meeting. Based on the amount of STE available in both the small-project set-aside and the general pool, the two complete Applications received by the December 2020 application deadline were considered in order of receipt, with one of the Applicants receiving the remaining STE from the small-project set-aside. The two Applications received by the January 2021 application deadline were ranked based on the competitive criteria, and the Application with the greater point-score was the third and final Application considered at

the May 2021 CAEATFA Board meeting. CAEATFA has continued to accept Applications for the 2021 calendar year waiting list, which currently has 15 Applications requesting approximately \$56 million in STE.

CAEATFA Staff assessed the benefits and challenges of the regulations modifications, and at the October 19, 2021, CAEATFA Board meeting, the Authority approved modified regulations to improve and streamline the STE Program administration and incorporate lessons learned from Program implementation.

The Authority proposes to amend Title 4, Division 13, Article 2, Sections 10031 through 10036 of the California Code of Regulations concerning the implementation of the Sales and Use Tax Exclusion Program. These regulations were initially adopted under the emergency regulation process on November 4, 2020 (OAL File Nos. 2020-1026-02(E) and 2021-0820-04(EE)), as well as modifications that were approved at the October 19, 2021, CAEATFA Board meeting. The proposed Regulations address the Program's oversubscription for the last three years, the unprecedented economic impact of the COVID-19 pandemic, implement the statutory changes under AB 176, and incorporate lessons learned from Program implementation. The proposed amendments and objectives for each modification are described below.

The proposed regulations will allow the Authority to continue to offer financial assistance to Alternative Source, Advanced Transportation, Advanced Manufacturing, and recycling Projects. By promoting these types of Projects, the Authority promotes the creation of California-based manufacturing, California-based jobs, and the reduction of greenhouse gas emissions, air and water pollution, and energy consumption consistent with the statute.

SECTION-BY-SECTION ANALYSIS

Section 10031. Definitions.

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

Current regulation definitions do not fully reflect updates made to the Program's authorizing statute, as amended by SB 1128 (Padilla, Chapter 677, Statutes of 2012) and AB 199 (Eggman, Chapter 768, Statutes of 2015). Additionally, the definition of Administrative Fee does not clearly reflect how the fee is paid.

The proposed amendments also include two new definitions for additional clarity throughout the regulations.

2. Specific Purpose of the Regulation.

Section 10031(a) is amended to specify that the Administrative Fee is payable upon execution of the Regulatory Agreement and at the time of submitting semi-annual reports.

Section 10031(p) is amended to update the definition of “Facility” or “Facilities” to include Advanced Manufacturing and recycling Projects.

Section 10031(v) is amended to update the statutory reference for the definition of “Project” to Public Resources Code Section 26011.8(b)(1), as amended by AB 199.

Section 10031(w) is amended to update the definition of “Qualified Product” to include products produced by recycling Projects, which were added to the Program by AB 199.

Section 10031(ac) is added to define “Small Project Pool” as the set-aside of twenty million dollars (\$20,000,000) in sales and use tax exclusion available to award only to Applications requesting two million dollars (\$2,000,000) or less in sales and use tax exclusion through September each year pursuant to Section 10032(a)(4).

Section 10031(ad) is renumbered from Section 10031(ac).

Section 10031(ae) is added to define “Statutory Cap” as the maximum amount of sales and use tax exclusion the Authority may grant pursuant to Section 26011.8(h) of the Public Resources Code

3. Necessity.

Section 10031(a). The proposed amendment is necessary to clarify an Administrative Fee is not just due with submission of semi-annual reports, but also upon execution of the Regulatory Agreement, consistent with regulation Section 10036(b).

Section 10031(p). The proposed amendment is necessary to include Advanced Manufacturing and recycling Projects, which were added to the Program by SB 1128 and AB 199.

Section 10031(v). The proposed amendment is necessary to correct the statutory reference for the definition of “Project” to Public Resources Code Section 26011.8(b)(1), as amended by AB 199.

Section 10031(w). The proposed amendment is necessary to update the definition of “Qualified Product” to include products produced by recycling Projects, which were added to the Program by AB 199.

Section 10031(ac). Section 10032(a)(4) provides a set-aside of twenty million dollars (\$20,000,000) in sales and use tax exclusion available to award only to Applications

requesting two million dollars (\$2,000,000) or less in sales and use tax exclusion through September each year. Section 10031(ac) defines this set-aside as the “Small Project Pool” and is necessary to provide clarity when the Small Project Pool is referenced throughout the regulations.

Section 10031(ad) is renumbered from (ac) to (ad) to reflect the newly proposed Section 10031(ac).

Section 10031(ae) defines “Statutory Cap” as the maximum amount of sales and use tax exclusion the Authority may grant per calendar year pursuant to Section 26011.8(h) of the Public Resources Code. Current regulations refer to the statutory cap and the existing limit of one hundred million dollars (\$100,000,000). The proposed regulations make Statutory Cap a defined term for clarity and help distinguish the Statutory Cap from the annual \$10 million in STE per-Applicant cap established in regulations.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on authorizing statute and existing regulations.

5. Alternatives to the Regulations Considered by the Agency and the Agency’s Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. The proposed regulations provide clarity for Applicants and stakeholders.

Section 10032(a). Application Requirements. Timing of Application Submissions.

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

Public Resources Code Section 26011.8(h) limits the Authority to awarding \$100 million in sales and use tax exclusions in each calendar year. The Program first reached this limit in 2015, and again in 2016. In 2016, CAEATFA adopted regulations implementing a \$20 million in STE per-Applicant cap. In 2019, the \$100 million in STE allocation was fully awarded by the July meeting, and in 2020, the entire allocation was awarded after one application period at the March meeting.

For the 2021 calendar year, CAEATFA received 31 Applications by the first deadline of November 20, 2020, for consideration in January 2021, requesting over \$102 million in STE. Given the number of Applications received and the time needed to implement the different pools of STE and the competitive process, the first Applications were considered at the March 2021 CAEATFA Board meeting.

At the March 2021 CAEATFA Board meeting, the CAEATFA Board approved 29 Applications, leaving an estimated STE value of \$7,020,745 in the STE Program's general pool. The Applications considered in March resulted in an oversubscription of the \$20 million in STE set aside for small projects requesting \$2 million or less in STE and a competitive process for that particular pool. The general pool of STE was not oversubscribed based on the complete Applications received by the deadline for consideration, and, therefore, all Applications under that pool were brought before the CAEATFA Board in order of receipt. Subsequently, one of the Applicants approved in March 2021 did not move forward with executing a Regulatory Agreement with CAEATFA, restoring \$433,011 in STE to the small-project set-aside.

After the March 2021 CAEATFA Board meeting, CAEATFA had eight Applications in the queue for the remaining 2021 calendar year STE. The remaining STE was awarded to three Applicants at the May 2021 CAEATFA Board meeting. Based on the amount of STE available in both the small-project set-aside and the general pool, the two complete Applications received by the December 2020 application deadline were considered in order of receipt, with one of the Applicants receiving the remaining STE from the small-project set-aside. The two Applications received by the January 2021 application deadline were ranked based on the competitive criteria, and the Application with the greater point-score was the third and final Application considered at the May 2021 CAEATFA Board meeting. CAEATFA has continued to accept Applications for the 2021 calendar year waiting list, which currently has 15 Applications requesting approximately \$56 million in STE.

Current regulations provide that Applications will be accepted on a rolling basis but must be submitted at least 60 days prior to the Board meeting at which the Applicant would like to be considered. In recent years, CAEATFA has received more Applications each month than in previous years, particularly in the last two years where the STE Program

was oversubscribed after the first application deadline. Additionally, the implementation of the different pools of STE and determining the order of consideration and review of Applications has increased the time it takes for Staff to review Applications. As a result, Staff has required more than 60 days to review and prepare Applications to bring before the Board for consideration.

Although the Competitive Criteria were adopted by CAEATFA in July 2016 and became effective in August 2016, they were not implemented until the July 2019 Board meeting, at which time Staff and the Board recognized the Competitive Criteria did not best reflect current Program goals and priorities.

The proposed regulations will allow the Authority to manage Program oversubscription in a manner that best advances Program goals and priorities. This section also contains amendments designed to streamline the Program application, making the application process less burdensome for California businesses. This section is also amended to make some technical and clarifying changes.

2. Specific Purpose of the Regulation.

Section 10032(a)(1) is amended to provide that the Executive Director will announce application periods prior to the start of each calendar year. The announcement will include the (1) application periods, (2) deadline to submit Applications for each application period, (3) tentative dates when the Authority will hold Board meetings to consider Applications, and (4) amount of STE available to award during each application period. The Executive Director can reschedule or amend any previously announced application period by providing notice on the Authority website, and may reschedule or relocate any previously announced Board meeting so long as the information is posted on the Authority website at least 10 days before the scheduled meeting.

Section 10032(a)(2) is amended to remove the requirement that Applications be submitted in a hard copy (paper) format.

Section 10032(a)(4) is added to establish the Small Project Pool, a set-aside of \$20 million in STE for Applications requesting \$2 million or less in STE. This \$20 million would be set aside through September, and if any remains after the September, it would be made available to award to all Applicants beginning in October. The order in which the Applicants will be considered for an award from the Small Project Pool will be based on Competitive Criteria. If the last Applicant considered requests more than what is available from the remaining \$20 million set-aside, the Applicant will be made whole from the general pool of STE allocation, if any remains. Any Application requesting \$2 million or less in STE that is not awarded from the Small Project Pool will be considered for an award from the general pool of STE allocation, if any remains.

Section 10032(a)(5) is renumbered from (4) to (5) and is amended to lower the per-Applicant cap from \$20 million in STE to \$10 million in STE. Reference is added to new subparagraph (5)(B), which, along with existing subparagraph (A), is an exception to the

\$10 million per Applicant cap in STE. The “STE” abbreviation is deleted due to prior establishment in proposed subparagraph (a)(4) above.

Section 10032(a)(5)(A) is amended to change the order in which Applicants will be considered for additional STE if any STE is available at the last Board meeting of the year. This section is also amended to reflect that the Program will have specific application periods and to make some clarifying, grammatical, and technical changes.

The proposed regulations provide that if there is additional STE available at the last application period of the calendar year after all Applications are considered, it will first be made available to the last Applicant considered for additional STE above the \$10 million cap if that Applicant did not receive its full request, in order to provide more certainty to that Applicant, then to any additional Applicants wishing to exceed the \$10 million cap that were not awarded at the first Board meeting of the year on a competitive basis. If there is still additional STE available, then Applicants wishing to exceed \$20 million in STE will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria. Section 10032(a)(5)(A)(i) is deleted so that the amount of additional STE awarded will not be proportional based on the Competitive Criteria scores, but based on the full amount requested, as is done under the general Competitive Criteria process. The Applicants still will be required to update their Applications if any of the information has changed.

Reference to the \$20 million in STE per-Applicant cap is amended to reflect the proposed \$10 million in STE per-Applicant cap.

The amendment also establishes that the Executive Director, rather than the Authority, will announce end-of-the-year availability of STE.

Section 10032(a)(5)(B) is added to allow Applicants with larger Projects to seek additional STE from a set-aside of \$15 million in STE, which will be awarded in addition to the \$10 million per-Applicant cap, with a potential award of up to \$20 million in STE per Applicant.

In the first application period of the calendar year, \$15 million in STE will be available to award on a competitive basis in addition to the \$10 million in STE cap. Requests for additional STE from the \$15 million in STE set-aside will be capped at \$10 million in STE and must be submitted during the first application period of the calendar year. If the amount requested in the last Application considered exceeds the STE available from the \$15 million in STE, the Applicant will only receive the amount remaining from the \$15 million in STE. If any of the \$15 million is not awarded, it will be made available to award to all Applicants.

Section 10032(a)(6) is renumbered from subparagraph (5) to (6), and is amended to terminate the waiting list at the end of the calendar year. This section also establishes a process for awarding Applicants STE if any additional STE become available during the calendar year.

Because the proposed regulations do not provide that the last Applicant considered will always be made whole from the next calendar year's STE allocation, the proposed regulations provide that if additional STE becomes available during the calendar year, it will first be awarded to the last Applicant considered, if it did not receive its full STE request, then if there is still STE available, Applicants on the waiting list will be considered in the order in which they are ranked based on Competitive Criteria.

This section is also amended to make grammatical changes and to reflect that Statutory Cap is now a defined term.

Section 10032(a)(6) is deleted to reflect that the order of consideration of Applications will be based on a ranking of Competitive Criteria and no longer based on the order in which Applications are received.

Section 10032(a)(7) is amended to specify that the order in which all Applications will be reviewed and considered, even if the Program is not oversubscribed, will be based on a ranking of Competitive Criteria, except as provided in paragraph (4).

Section 10032(a)(7)(A) is amended to reflect that the proposed amended Competitive Criteria are not worth between one and five points.

Current regulations provide that if the amount of STE requested by the last Applicant considered exceeds the STE available in the calendar year, CAEATFA will award the remaining STE request using STE from the following calendar year. This section is also amended to cap the amount awarded to the Applicant from the following calendar year to \$2 million in STE.

Section 10032(a)(7)(B) is amended to update the Competitive Criteria by which Applicants are ranked.

The proposed amendments award 100 points to Applicants with Recycled Resource Extraction Projects or Projects that produce an Advanced Transportation Technology or an Alternative Source product, component, or system.

The proposed amendments maintain the competitive criterion that looks at the unemployment rate of the county in which the Project will be located, but imports the calculation and scoring from regulation Section 10033(c)(5)(A). Applicants will receive up to 75 points based on the amount of STE per job created, as calculated pursuant to regulation Section 10033(c)(5)(B). Projects rebuilding or relocating due to specific natural disasters still receive points under the Competitive Criteria, but the proposed regulations increase the number of points awarded from five to 50 points. The proposed amendments also maintain the criterion for Applicants with a California Corporate Headquarters, and increase the number of points awarded from one point to 15 points to scale the points consistent with the other Competitive Criteria and priorities.

The proposed amendments award 50 points in the Competitive Criteria to Applicants that are not eligible to use any of the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code, and specify Authority staff will consult with the California Department of Tax and Fee Administration (“CDTFA”) regarding questions of eligibility for any of the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code.

The proposed amendments also award 75 points if the Project’s industry is in an Emerging Strategic Industry.

The proposed amendments remove the Competitive Criteria for Applicants that have not previously been approved for an STE award and Applicants classified as small businesses.

Section 10032(a)(8) is deleted.

Section 10032(a)(8) is renumbered from subparagraph (9) to (8).

3. Necessity.

Section 10032(a)(1). Current regulations provide that Applications will be accepted on a rolling basis but must be submitted at least 60 days prior to the Board meeting at which the Applicant would like to be considered. In recent years, CAEATFA has received more Applications each month than in previous years, particularly in the last two years where the STE Program was oversubscribed after the first application deadline. Additionally, the implementation of the different pools of STE and determining the order of consideration and review of Applications has increased the time it takes for Staff to review Applications. As a result, Staff has required more than 60 days to review and prepare Applications to bring before the Board for consideration.

The proposed amendments are necessary to balance CAEATFA’s ability to address variable Application submissions and allow Staff appropriate time to review each Application. By allowing the Executive Director to announce application periods prior to the start of each calendar year, CAEATFA can adapt and respond to Program demand by lengthening or shortening the Application review period. This flexibility will provide Staff sufficient time to review Applications and more certainty to Applicants as to when their Applications will be brought before the Board. Specific application periods that are properly spaced also prevents Applications from being submitted after an application deadline and sitting un-reviewed for long periods of time before Staff knows how much STE remains available to award.

So that potential Applicants know when to apply and the amount of STE that will be available, the announcement will include the (1) application periods, (2) deadline to submit Applications for each application period, (3) tentative dates when the Authority will hold Board meetings to consider Applications, and (4) amount of STE available to award during each application period.

The proposed regulations provide that the Executive Director may reschedule or amend any previously announced application period and may reschedule or relocate any previously announced Authority Board meeting to provide additional flexibility to respond to unforeseen circumstances, such as receiving a larger or smaller number of Applications than anticipated, or if there is an increase in the Statutory Cap, as has been proposed in past legislation and state budget proposals. The proposed regulations also require the Executive Director provide at least 10 days of notice of any rescheduled or relocated Authority Board meeting in order to comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

Section 10032(a)(2). CAEATFA has determined that a hard copy of the Application is not necessary; therefore, this amendment is necessary to streamline the Application process and remove the requirement of providing a hard copy Application.

Section 10032(a)(4) is amended to establish the Small Project Pool, a set-aside of \$20 million in STE for Applications requesting \$2 million or less in STE. These modifications are necessary to balance CAEATFA's ability to ensure a broad distribution of STE and assist larger, scalable Projects.

Historical data shows that since the Program began, approximately 71% of Applications have been for Projects of \$2 million or less in STE. While \$2 million in STE represents a small percentage of the total \$100 million in STE allocation, this Project size also accommodates over a majority of Applicants. Additionally, historical data since the beginning of the Program show the average of total amount of STE awarded to Applications requesting \$2 million or less in STE in one calendar year is \$11,052,087. Since 2015, when the Legislature gave CAEATFA the authority to award STE to Applicants that process or utilize recycling, the average total amount of STE awarded to Applications requesting \$2 million or less in a calendar year is \$13,399,348. Setting aside \$20 million will ensure that the historical number of smaller Projects are guaranteed to receive STE and allow room for growth in the number of smaller Projects awarded. The largest total amount of STE awarded to Applicants requesting \$2 million or less in a single calendar year was \$26,295,395 in 2017. Even if the number of smaller Projects again reaches or surpasses the height of 2017, the \$20 million set-aside will ensure that the majority of those Applicants will receive STE, while allowing the remainder of Applicants requesting \$2 million or less to qualify for STE from the general pool.

The proposed regulations are necessary to ensure both a broad distribution of awards and the ability to assist large, scalable Projects. By setting aside \$20 million for Applicants requesting \$2 million or less in STE, the Board will be able to ensure that a broad number of smaller Projects will be able to receive STE in the full amount requested. Under previous regulations, Applicants seeking larger amounts in STE could take the majority of STE during the calendar year, thus leaving less STE for smaller Projects. This amendment guarantees that at least \$20 million in STE will be available to award to Applicants seeking financial assistance for a variety of smaller Projects. The Small Project Pool works in conjunction with the \$15 million set-aside for Applicants seeking

up to \$20 million in STE, as detailed in proposed Section 10032(a)(5)(B). With both of these proposed changes, CAEATFA will have the flexibility it needs to support smaller Projects and larger, scalable Projects.

Applications considered under the Small Project Pool will be presented to the CAEATFA Board in the order in which Applications are ranked based on Competitive Criteria

The Small Project Pool will be awarded in order based on Competitive Criteria in order to have a simple and clear method for Staff to determine order, regardless of whether the Small Project Pool is oversubscribed, and to prioritize specific goals and policies when the Small Project Pool is oversubscribed. The proposed amendments place the order of consideration of Small Project Pool Applicants before all other Applicants and because the intent of the Small Project Pool is to award at least \$20 million in STE to smaller Projects, if an Applicant is not awarded from the Small Project Pool, it can be awarded from the general pool of STE. The proposed amendments also provide that the last Applicant awarded from the Small Project Pool can be made whole from the general pool of STE to provide more certainty for the Applicant and because the intent of the Small Project Pool is to award at least \$20 million in STE to smaller Projects.

The Small Project Pool is set aside through September each year to provide a significant portion of the calendar year for potential Applicants to be awarded from the Small Project Pool, while also leaving sufficient time to make any unawarded STE from the Small Project Pool available to all Applicants to ensure no STE is unnecessarily left unawarded.

Section 10032(a)(5) is amended to lower the per-Applicant cap from \$20 million in STE to \$10 million in STE.

The \$20 million in STE cap amount was originally chosen in 2016 based on historical data at the time, and was determined to most effectively balance the competing needs to (1) ensure a broad distribution of awards, and (2) incentivize large, transformational Projects that may have correspondingly large benefits to the state. Given the increased participation and competition in the Program, the \$20 million cap no longer effectively balances the need to ensure broad distribution of awards. Based on award amounts to date, over 90% of approved Applications have requested \$10 million or less in STE. Lowering the cap is necessary to maximize the number of eligible Applicants receiving an award, but still enable the vast majority of Applications to be fully awarded with a sizable award (ability to purchase over \$119 million in equipment and machinery).

Applicants with larger Projects may still receive additional STE if any remains at the end of the year, or by coming back to the Board for consideration in subsequent calendar years, effectively limiting the Project to spending about \$119 million in a calendar year, but not capping the overall Project size. Additionally, Applicants seeking up to \$20 million in STE may apply for up to \$10 million over the \$10 million cap from a \$15 million set-aside, as described in proposed Section 10032(a)(5)(B).

Proposed subparagraph (5) is renumbered from (4) to (5), which is necessary due to the addition of proposed subparagraph (4).

Reference is added to new subparagraph (5)(B), which, along with existing subparagraph (A), is an exception to the \$10 million per Applicant cap in STE.

The “STE” abbreviation is deleted due to prior establishment in proposed subparagraph (a)(4) above.

Section 10032(a)(5)(A) is amended to change the order in which Applicants will be assessed for additional STE if any STE is available at the last application period of the year in order to reflect the proposed \$15 million in STE available to award to larger Projects under Section 10032(a)(5)(B), to provide Applicants more certainty, and to invest the STE awards more strategically to better promote Program policy goals.

Current regulations provide that if there is STE available at the end of the year, capped Applicants may submit an updated Application or a new Application for consideration at the December Board meeting to receive additional STE. Current regulations also provide that the additional STE will be allocated proportionally based on the Applicants’ Competitive Criteria scores.

The proposed amendments are necessary to allow the Board flexibility to consider Applicants that sought more than the \$10 million per-Applicant cap, but were not awarded additional STE from the set-aside for larger Projects as detailed in proposed Section 10032(a)(5)(B). These amendments will give the Board the ability to award any STE left over at the end of the year to those Projects that will benefit most from receiving STE over the \$10 million per-Applicant cap.

The proposed regulations provide that if there is additional STE available at the last Board meeting of the year, it will first be made available to the last Applicant considered for additional STE above the \$10 million cap if that Applicant did not receive its full request, in order to provide more certainty to that Applicant, then to any additional Applicants wishing to exceed the \$10 million cap that were not awarded at the first Board meeting of the year, on a competitive basis. If there is still additional STE available, then Applicants wishing to exceed \$20 million in STE will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria.

Section 10032(a)(5)(A)(i) is deleted so that the amount of additional STE awarded will not be proportional based on the Competitive Criteria scores, but based on the full amount requested, as is done under the general Competitive Criteria process, to provide Applicants more certainty, and to invest the STE awards more strategically to better promote Program policy goals.

Reference to the \$20 million per-Applicant cap in STE is amended to reflect the proposed \$10 million per-Applicant cap in STE.

The amendment also establishes that the Executive Director, rather than the Authority, will announce end-of-the-year availability of STE, which is necessary to streamline Program administration. CAEATFA will not know the amount of STE potentially available until after the deadline for the last application period, which means that if the CAEATFA Board must vote to announce the availability of STE after the last application period, there would be a very short amount of time between the vote to open up the additional STE to capped Applicants and the last Board meeting at which to consider the requests for additional STE, during which time Staff must receive and review updated Applications and prepare summaries of the revised Applications. Given that the Board will still retain the authority to consider each individual request for additional STE, the proposed amendments streamline the process and allow the Executive Director to announce the availability of additional STE at the end of the year as soon as this is known, rather than needing to wait until a Board vote.

The proposed amendments update references to December or the last Authority meeting to the last application period and are necessary to reflect that the proposed regulations establish application periods.

The proposed amendments are also necessary to clarify that the additional STE to award to Applicants beyond the \$10 million cap is STE available only after all Applications are considered, not just if there is any STE available in the last application period.

This section is also amended to make some grammatical and punctuation changes and to specify the Executive Director will announce end-of-the-year availability of STE prior to the last Authority Board meeting of the calendar year in order to provide more clarity.

Section 10032(a)(5)(B) is added to allow Applicants with larger Projects to seek additional STE from a set-aside of \$15 million in STE, which will be used in addition to the proposed \$10 million per-Applicant cap from the general pool of STE, to award up to \$20 million in STE per Applicant, consistent with the current annual per-Applicant cap.

The \$15 million set-aside will provide flexibility to support larger Projects and continued business investment in California, but also ensures that larger awards do not inadvertently absorb all of the STE allocation. Under previous regulations, any Applicant could seek up to \$20 million in STE, thus providing for the possibility that as few as five larger Projects could take all of the available STE, leaving no STE for smaller Projects.

These proposed regulations are necessary to ensure both a broad distribution of awards and the ability to assist large, scalable Projects. Setting aside \$15 million in STE for the Board to award to Applicants seeking more than the general per-Applicant cap of \$10 million allows for a smaller but significant amount of STE to be awarded to Applicants seeking to establish larger, scalable Projects in California. Historically, since the Program began, an average of two to three Applicants have received awards over \$10 million in STE in a calendar year. With \$15 million to award above \$10 million, up to \$20 million per Applicant, CAEATFA can award up to one \$20 million Project, and one or more Projects requesting \$15 million or under in STE. By awarding the

\$15 million on a competitive basis, CAEATFA can strategically invest the STE to meet Program policy goals. The \$15 million set-aside for Applicants seeking up to \$20 million in STE works in conjunction with the Small Project Pool so that CAEATFA will have the flexibility it needs to support both smaller Projects and larger, scalable Projects.

The proposed amendments specify Applicants requesting additional STE above the \$10 million cap apply in the first application period so that the Applications can all be considered in one application round competitively to strategically invest the STE to meet Program policy goals, and if any of the STE is not awarded, the remaining STE can be made available to award to all Applicants.

The proposed amendments provide that Applicants will only receive what is available from the \$15 million set-aside, rather than providing additional STE from the general pool if there is not enough STE in the \$15 million set-aside to make the last Applicant whole, to limit how much is awarded to larger projects, which could be another almost \$10 million on top of the \$10 million from the general pool, because the intent of the \$15 million is to provide an opportunity for larger Projects to receive additional STE, while limiting how much of the Statutory Cap is taken up by larger Projects.

Section 10032(a)(6). The proposed regulations provide that the waiting list will terminate at the end of the year, which, given the competitive nature of the Program, is necessary to prevent Applicants from applying too early in order to get in line for consideration in the following calendar year.

Current regulations provide that if additional STE becomes available, Applications on the waiting list will be reviewed and considered in the order in which they are ranked based on Competitive Criteria. Because the proposed regulations do not provide that the last Applicant considered will always be made whole from the next calendar year's STE allocation (see Section 10032(a)(7)(A)), the proposed regulations provide that if additional STE becomes available during the calendar year, it will first be awarded to the last Applicant considered, if that Applicant did not receive its full STE request, to provide more certainty and make that Applicant's request whole, then if there is still STE available, Applicants on the waiting list will be considered in the order in which they are ranked based on Competitive Criteria.

This section is also renumbered from subparagraph (5) to (6), which is necessary due to the addition of proposed subparagraph (4).

This section is also amended to correct some grammatical errors and to reflect that Statutory Cap is a defined term to provide more clarity in the regulations.

Section 10032(a)(6) is deleted to reflect that the order of consideration of Applications will be based on a ranking of Competitive Criteria and no longer based on the order in which they are received.

Section 10032(a)(7) is amended to specify that the order in which all Applications will be reviewed and considered, even if the Program is not oversubscribed, will be based on a ranking of Competitive Criteria, except as provided in paragraph (4). The proposed amendments are necessary to provide a clear and simple way to determine the order of review and consideration of Application given the different pools of STE established under the proposed regulations.

Current regulations provide that Applications will be considered on a first-come, first-served basis until the STE Program becomes oversubscribed, at which point Applications will be considered in order based on Competitive Criteria scores. The proposed regulations also establish a \$20 million in STE set-aside for smaller projects of \$2 million or less in STE and a pool of \$15 million in STE for larger projects that apply to exceed the \$10 million in STE cap. If only one of the pools of STE is oversubscribed, there needs to be clarity as to the order of consideration within and among the different pools of STE.

If the STE Program is not oversubscribed, the order of consideration of Applications is immaterial to whether an Applicant will receive an award. However, by using Competitive Criteria scores to determine the order of review for all Applications, regardless of whether the pool is oversubscribed and establishing that the Small Project Pool will be considered first, Staff can more quickly and easily determine the order of review and consideration for Applications, while still prioritizing Projects if a pool is oversubscribed to invest the STE awards more strategically to better promote Program policy goals.

Section 10032(a)(7)(A) is amended to reflect that the proposed amended Competitive Criteria are not worth between one and five points.

Current regulations provide that if the amount requested by the last Applicant considered exceeds the STE available in the calendar year, CAEATFA shall award the remaining STE request using STE from the following calendar year. The proposed regulations cap the amount awarded to the Applicant from the following calendar year to \$2 million in STE. This is necessary to limit the amount of STE taken from the subsequent year given the competitive nature of the Program, while still providing enough STE to try to make the Applicant as whole as possible to provide the Applicant more certainty. Since the Program began, over 71% of Applications have been for \$2 million or less in STE.

Section 10032(a)(7)(B) is amended to update the Competitive Criteria by which Applicants are ranked in the event the Program is oversubscribed. Although the current Competitive Criteria were adopted by CAEATFA in July 2016 and became effective in August 2016, they were not implemented until the July 2019 Board meeting, at which time Staff and the Board recognized the Competitive Criteria did not best reflect current Program goals and priorities.

The proposed amendments award 100 points to Applicants with Recycled Resource Extraction Projects or Projects that produce an Advanced Transportation Technology or

an Alternative Source product, component, or system in order to give highest priority to Projects with quantifiable environmental benefits, consistent with the Program's statutory purpose to promote the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption, as well as the statutory requirement that the Authority evaluate Applications based on, to the extent feasible, the extent to which the Project, or the product produced by the Project, results in a reduction of greenhouse gases, a reduction in air and water pollution, an increase in energy efficiency, or a reduction in energy consumption.

The proposed amendments maintain the competitive criterion that looks at the unemployment rate of the county in which the Project will be located, but imports the calculation and scoring from regulation Section 10033(c)(5)(A) to simplify the process and scale the points consistent with the other Competitive Criteria and priorities. This criterion is necessary to prioritize Projects that will be located in areas with higher than average unemployment, helping to create jobs in these areas. STE Applicants typically hire both temporary construction and permanent employees for their Projects. These new jobs are especially valuable in areas with higher than average unemployment, which is why the unemployment rate criterion is used to rank Applications in the event of Program oversubscription. Moreover, inclusion of unemployment rate criteria is consistent with evaluation criteria set forth in the authorizing statute, Public Resources Code Section 26011.8(d)(5).

The proposed amendments award up to 75 points to Projects based on the amount of STE per job created, as calculated pursuant to regulation Section 10033(c)(5)(B). This amendment is necessary to prioritize Projects that create jobs in California, consistent with the Program's statutory purpose to promote the creation of California-based jobs and Public Resources Code Section 26011.8(d)(3), which requires the Authority to evaluate Projects based on the extent to which the Project will create new, permanent jobs in California. This amendment also enables CAEATFA to help both small businesses and larger businesses, recognizing the need to assist both small Projects and larger, scaling Projects in order to meet the Program's goals. The proposed amendments award up to 75 points based on the other Competitive Criteria and priorities.

The proposed amendments maintain the criterion for Projects rebuilding or relocating due to specific natural disasters, to recognize the public benefit of assisting and retaining manufacturers affected by these large-scale emergency disasters. The amendments increase the number of points awarded to from five points to 50 points to scale the points consistent with the other Competitive Criteria and priorities. The amendments are necessary to recognize the public benefit of assisting and retaining manufacturers affected by these large-scale emergency disasters. Because a state of emergency proclamation may be made for various reasons that would not directly affect the operability of a manufacturing facility, such as a vaccine shortage, it is necessary to limit the proposed regulation to physical disasters. The proposed regulations limit eligibility for the competitive criterion to state of emergency proclamations made within two years of the time of application in order to give manufacturers sufficient time to develop a proposed Project while also prioritizing manufacturers that seek to quickly and efficiently

restart operations, thereby maximizing the economic impact of assisting affected manufacturers.

The proposed amendments maintain the criterion for Applicants with a California Corporate Headquarters. This amendment is necessary to prioritize Applicants that have their Corporate Headquarters located in California. The presence of a Corporate Headquarters in California brings jobs for California residents and tax revenue that can be reinvested back into the state. The amendments increase the number of points awarded from one point to 15 points to scale the points consistent with the other Competitive Criteria and priorities.

The proposed amendments award 50 points in the Competitive Criteria to Projects that do not qualify for the CDTFA partial sales tax exemption (under Revenue and Taxation Code Section 6377.1) to acknowledge the difference between the STE Program and the partial exemption, which can offset the Applicant's costs of not receiving a CAEATFA STE award. The proposed regulations specify that Staff will consult with CDTFA regarding questions of eligibility for the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code. This amendment is necessary to provide Projects that cannot receive a partial tax exemption a balanced opportunity to receive tax relief under the STE Program. The proposed amendments award 50 points based on the other Competitive Criteria and priorities.

Existing regulations allow the Executive Director to develop a list of Emerging Strategic Industries, which are innovative industries, technologies, or products identified by the Executive Director as having a potentially significant impact on the state's environmental goals or economy, the advancement of which are in the public interest, and which advance the purposes of the Program. Existing regulations provide that Applicants in an Emerging Strategic Industry will receive 40 points to their Application score. To recognize in the Competitive Criteria scoring process the potential benefits of an Emerging Strategic Industry, the proposed regulations add a new competitive criterion that awards 75 points to an Applicant if the Project is in an Emerging Strategic Industry. The proposed amendments award 75 points based on the other Competitive Criteria and priorities.

The proposed amendments remove the competitive criterion for new Applicants in order to prioritize the specific benefits of individual Projects consistent with the Program's purpose and goals.

Section 10032(a)(8) is deleted because the proposed regulations state that the Program will have application periods and board meeting dates that are announced prior to each calendar year, rather than the set 60-day review period.

Section 10032(a)(8) is renumbered from subparagraph (9) to (8). This is necessary due to the deletion of the former subparagraph (8).

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on authorizing statute and existing regulations, its historical experience administering the Program, and a consultant hired to assist with Program development to develop the proposed regulations. The Authority also relied upon feedback from Program participants and stakeholder feedback.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute. Each alternative considered is described below.

Alternatives to Application Periods Announced Prior to Each Calendar Year

Rather than announcing application periods prior to each calendar year, the Authority considered continuing to accept Applications on a rolling basis, which the Authority previously utilized to provide flexibility by allowing Applicants to apply when it best fit their business plan. However, given the realities of current Program demand, which has sometimes resulted in the Program becoming oversubscribed by the first application deadline, Applicants must apply early in the calendar year regardless of the Authority accepting Applications on a rolling basis. Additionally, by continuing to accept Applications even before the Authority knows if the Program is oversubscribed, some Applications sit unreviewed for months without any certainty to the Applicant as to whether the Application may be heard.

The Authority also considered accepting and reviewing Applications at set intervals throughout the year, such as during two or three periods per year, which would help distribute the STE review and award workload throughout the year. Given the current economic conditions as a result of the COVID-19 pandemic and the ever-changing market and Program demand, the proposed regulations provide the necessary flexibility of adapting the application periods each year in response to market conditions and Program demand.

Alternatives to the \$10 million cap, \$20 million set-aside for smaller projects, and \$15 million available for large projects

The Authority considered various cap amounts between \$5 million and \$10 million in STE. Based on award amounts to date, over 90% of approved Applications have requested \$10 million or less in STE. Although a cap amount lower than \$10 million would increase the total number of Applications that the Authority could approve, it would prevent the Authority from assisting larger, more capital-intensive Projects, which may have correspondingly larger benefits, and unnecessarily penalizes scaling companies

for succeeding. Lowering the cap to \$10 million maximizes the number of eligible Applicants receiving an award, but still enables the vast majority of Applications to be fully awarded with a sizable STE (ability to purchase over \$119 million in equipment and machinery).

To ensure availability of STE for smaller Projects and large Projects over \$10 million in STE, the Authority considered various set-aside amounts and Project size thresholds for each set-aside. The Authority analyzed historical data since the Program began, which showed that approximately 71% of Applications have been for Projects of \$2 million or less in STE. While \$2 million in STE represents a small percentage of the total \$100 million in STE allocation, this Project size also accommodates a majority of Applicants, and prevents larger mid-sized Projects from crowding out smaller Projects. Historical data since the beginning of the Program show the average of total amount of STE awarded to Applications requesting \$2 million or less in STE in one calendar year is \$11,052,087. Since 2015, when the Legislature gave CAEATFA the authority to award STE to Applicants that process or utilize recycling, the average total amount of STE awarded to Applications requesting \$2 million or less in a calendar year is \$13,399,348. Setting aside \$20 million will ensure that the historical number of smaller Projects are guaranteed to receive STE and allow room for growth in the number of smaller Projects awarded. The largest total amount of STE awarded to Applicants requesting \$2 million or less in a single calendar year was \$26,295,395 in 2017. Based on this historical data, the Authority chose a \$20 million set-aside because even if the number of smaller Projects again reaches or surpasses the height of 2017, the amount will ensure that the majority of those Applicants will receive STE, while allowing the remainder of Applicants requesting \$2 million or less to qualify for STE from the general pool.

Setting aside \$15 million in STE for the Board to award to Applicants seeking more than the general per-Applicant cap of \$10 million allows for a smaller but significant amount of STE to be awarded to Applicants seeking to establish larger, scalable Projects in California. When the Authority adopted a \$10 million in STE per-Applicant cap at the end of 2019, without set-asides for small or large Projects, stakeholders were concerned that \$10 million in STE would not be enough given the growing costs of advanced technology. Historically, since the Program began, an average of two to three Applicants have received awards over \$10 million in STE in a calendar year. With \$15 million to award above \$10 million, up to \$20 million per Applicant, CAEATFA can award up to one \$20 million Project, and one or more Projects requesting \$15 million or under in STE.

Alternatives to the Competitive Criteria

The Authority considered various other criteria, including whether the Applicant is a small business, whether the Applicant is new to the Program, providing benefits and fringe benefits to employees, and manufacturing products to combat COVID-19. When deciding on the Competitive Criteria, the Authority considered the Program's statute and long-term policy goals and priorities, characteristics that are common among all types of

eligible Projects, and keeping the Competitive Criteria process as simple as possible so that scores can be determined quickly.

The proposed amendments remove the competitive criterion for new Applicants in order to prioritize the specific benefits of individual Projects consistent with the Program's purpose and goals. Additionally, the proposed amendments look at the amount of STE per estimated number of jobs created, rather than whether the Applicant is a small business, consistent with the Program's statutory purpose to promote the creation of California-based jobs and Public Resources Code Section 26011.8(d)(3), which requires the Authority to evaluate Projects based on the extent to which the Project will create new, permanent jobs in California. This criterion also enables the Authority to help both small businesses and larger businesses, recognizing the need to assist both small Projects and larger, scaling Projects in order to meet the Program's goals.

The Authority also decided to incorporate providing benefits and fringe benefits to employees in the Application scoring rather than Competitive Criteria, awarding additional points for providing such benefits in order to recognize the benefits of providing additional benefits to employees in the Application review, while also recognizing that the Program supports diverse industries, labor markets, and regional economies.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. The regulations are designed to address Program oversubscription and the economic impact of the COVID-19 pandemic, and to streamline the Program, reducing the burden on Applicants and the Authority. Participation in the Program is voluntary for eligible businesses; therefore, the regulations will not have an adverse impact on California businesses. In fact, the incentive provided by the Program is likely to have a positive effect on California businesses by reducing their capital purchasing costs.

Section 10032(b). Application Requirements. Application.

1. **Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.**

Current regulations provide that Applications will be accepted on a rolling basis but must be submitted at least 60 days prior to the Board meeting at which the Applicant would like to be considered. The proposed regulations instead include specific application periods that will be announced prior to each calendar year.

Current regulations require Applicants to provide a hard copy Application, which is no longer necessary. Additionally, the current cross-reference to Section 10032(a)(5) does not reflect the proposed Section 10032(a)(5)(B) and the need for added specificity to Section 10032(a)(5)(A).

This section also makes some clarifying changes.

2. **Specific Purpose of the Regulation.**

Section 10032(b)(1) is amended to clarify that the Applicant is the one who may correct any deficiencies if its Application is deemed incomplete, and resubmit the Application. This section is also amended to clarify that the date of submission will be determined based on the date the Authority receives the resubmitted Application.

Section 10032(b)(2) is amended to remove reference to the 60-calendar-day calculation for determining when an Application will be heard and instead refers to determining the date the Application is submitted because under the proposed regulation, the Program will have application periods and will no longer use the 60-day window to determine when an Application will be brought to the Board for consideration.

Section 10032(b)(4) is amended to specify the Application Fee must be received within five business days of submission of the Application, rather than submitted with the Application, and to more specifically reference Section 10032(a)(5)(A).

Section 10032(b)(5) is deleted to no longer require a paper copy of the Application.

3. **Necessity.**

The amendments in Section 10032(b)(1) are necessary to clarify that the Applicant is the one who may correct any deficiencies and resubmit an incomplete Application. The amendments are also necessary to clarify that that the date of submission will be determined based on the date the Authority receives the resubmitted Application so that the Applicant is clear on the date of submission used to determine if an application deadline is met.

The amendments in Section 10032(b)(2) are necessary to simplify the language and to reflect that the Program will have application periods and will no longer use the 60-day window to determine when an Application will be brought before the Board for consideration so that Applicants understand how the date of submission will be determined if the Applicant submits additional documents pertaining to the requirements or scoring categories.

Because the proposed amendments will require only an electronic version of the Application, the Application Fee must be submitted to the CAEATFA office separately. Therefore the proposed amendments in Section 10032(b)(4) specify the Application Fee must be received within five business days of submission of the Application, consistent with the current requirement that the hard copy Application and Application Fee must be received within five business days under the current text of regulation Section 10032(a)(2).

Section 10032(b)(5) is removed because the proposed amendments no longer require a hard copy Application.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on previous experience administering the Program.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. The proposed amendments are designed to streamline Program administration and the Application process, reducing the burden on Applicants and the Authority.

Section 10032(c). Application Requirements. Documentation.

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

This section is amended to update the Legal Status Questionnaire version date and include additional Applicant and Project information necessary to determine eligibility for Competitive Criteria points, as well as information necessary to better evaluate Program impact and reach.

Existing regulations provide that Advanced Manufacturing Applicants can receive points for having a Facility that performs research and development in California, for partnerships with educational institutions to train employees or potential future workers, and for being part of an industry cluster. The proposed regulations also open up the additional points available to Advanced Manufacturers for certain criteria to all eligibility pathways to recognize the economic growth benefits of these factors and that they may apply to all types of Applicants, not just advanced manufacturers.

Current regulations do not account for the potential economic benefit of Applicants that provide benefits and fringe benefits to employees in the Application scoring. The proposed regulations award additional points to Applicants that provide benefits and fringe benefits. Therefore, this section is amended to request information on the types of benefits and fringe benefits provided to employees.

Additionally, this section has been amended to include additional Application information necessary for the implementation of AB 176 (Chapter 672, Statutes of 2019), which requires CAEATFA to include in the Application evaluation criteria the extent to which a Project will result in a loss of permanent, full-time jobs in California, including the average and minimum wage of each classification of full-time employees proposed to be hired or not retained.

This section is also amended to request information about the taxability of the product produced to calculate the estimated fiscal benefits of the Project more accurately, and to add clarifying language and fix a technical error.

2. Specific Purpose of the Regulation.

Section 10032(c)(2) is amended to update the Legal Status Questionnaire version.

Section 10032(c)(4)(A)(vii) is added to request the Applicant's Corporate Headquarters address in the Application.

Section 10032(c)(4)(A)(viii) is added to request documentation demonstrating the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application, if applicable.

Section 10032(c)(4)(A)(ix) is added to include in the Application information requested from Applicants whether the Applicant is a small business. The proposed regulations define small business as: (1) having 100 or fewer employees, including affiliates; (2) having annual revenue of less than \$15 million, including affiliates; or (3) meeting the U.S. Small Business Administration standards.

Section 10032(c)(4)(A)(x) is added to request information from the Applicant about how it learned about the Program.

Section 10032(c)(4)(A)(xi) is added to request the Applicant's North American Industry Classification System (NAICS) code.

Section 10032(c)(4)(B)(i)e is amended to specify that the description of sources of financing necessary for Facility completion should include any state incentives or state financing the Applicant has applied for or received.

Section 10032(c)(4)(B)(i)j is amended to ask about the taxability of the product produced for purposes of generating sales taxes.

Section 10032(c)(4)(B)(i)k is added to request the projected average number of employees at the Facility, in full time equivalents, assuming the Qualified Property is not utilized.

Section 10032(c)(4)(B)(i)l is added to request documentation on the minimum and average wage of full-time employees proposed to be hired or not retained. The proposed regulations ask for the minimum and average wage of each classification of full-time employees proposed to be hired or not retained using the following wage categories: up to \$20,000; \$20,001–\$30,000; \$30,001–\$40,000; \$40,001–\$50,000; \$50,001–60,000; \$60,001–\$70,000; \$70,001–\$80,000; \$80,001–\$90,000; \$90,001–100,000; \$100,001–\$110,000; \$110,001–\$120,000; and over \$120,000. Wages include monetary compensation paid to the employee each year, not including tips, commissions, bonuses, stock options, overtime, or other compensation of any kind.

Section 10032(c)(4)(B)(i)m is added to request that Applicants provide an explanation for why a classification is being eliminated and if any existing employees in the classification will be retrained or reclassified.

Section 10032(c)(4)(C) is amended to specify that an Applicant is not to reduce the amount of Qualified Property listed in the Application to qualify for consideration under the Small Project Pool. This section is amended also to specify that an Applicant is not increase the amount of Qualified Property listed in the Application if the total amount of sales and use tax exclusion requested in the Application period for which the Application was submitted represent sales and use tax exclusion in excess of the Statutory Cap. This section is also amended to specify good faith estimates are acceptable if specific property characteristics are not available at the time of submission of the Application, and to make a grammatical correction.

Section 10032(c)(4)(F) is amended to remove the provision that the optional supplemental information will not be used to adjust an Applicant's score if it already exceeds the established points threshold. This section is also amended to remove the limitation that only Advanced Manufacturing Applicants may receive points for performing research and development in California, partnering with educational institutions, being part of an industry cluster, and the currently proposed factor of providing benefits and fringe benefits to employees. The proposed amendments also specify that eligible training opportunities include those for workers from disadvantaged communities.

This section is also amended to request information on whether the Applicant provides benefits and fringe benefits to its employees. This section is also amended to fix a numbering error.

3. Necessity.

Section 10032(c)(2) is amended to update the Legal Status Questionnaire version and is necessary to incorporate the most current version of the Legal Status Questionnaire. The Legal Status Questionnaire is updated to include matters related to employment conditions, including, but not limited to, wage claims, discrimination, or harassment, to more fully ascertain the legal integrity of the Applicant. The Legal Status Questionnaire is also revised to fix grammatical errors and add more specificity to what an Applicant is required to disclose.

Section 10032(c)(4)(A)(vii) is added to request the Applicant's Corporate Headquarters address in the Application and is necessary to verify if the Applicant has a Corporate Headquarters in California for purposes of determining eligibility for the Competitive Criteria points.

Section 10032(c)(4)(A)(viii) is added to request documentation demonstrating the Project is to relocate or rebuild the Applicant's facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclaimed by the Governor within two years of the time of application, if applicable. This documentation is necessary to verify if the Applicant will qualify for the 50 points awarded to Projects relocating or rebuilding due to specified natural disasters.

Section 10032(c)(4)(A)(ix) is added to include in the Application information requested from Applicants as to whether the Applicant is a small business to better understand and evaluate the STE Program's impact and reach. The proposed regulations define small business to accommodate the various types of small business models. The first two options: (1) 100 or fewer employees or (2) annual revenue of less than \$15 million including affiliates, are consistent with existing commercial underwriting practices and reflect simplified similar requirements of the California Department of General Services Certification Eligibility Requirements for state solicitation and contracting purposes. The third option enables an Applicant to use the U.S. Small Business Administration

standards directly, which is also consistent with existing commercial underwriting practices.

Section 10032(c)(4)(A)(x) is added to request information from the Applicant about how it learned about the STE Program. This information is necessary to better understand and evaluate the STE Program's impact and reach.

Section 10032(c)(4)(A)(xi) is added to request the Applicant's North American Industry Classification System (NAICS) code. This information is necessary to determine eligibility as an Emerging Strategic Industry in the Competitive Criteria and Application scoring.

Section 10032(c)(4)(B)(ie) is amended to specify that the description of the sources of financing necessary for facility completion should include any state incentives or state financing the Applicant has applied for or received. This information is necessary to add clarity to Applicants as to what type of sources of financing should be disclosed to get a more complete picture of the Project's financial status.

Section 10032(c)(4)(B)(ij) is amended to ask about the taxability of the product produced for purposes of generating sales taxes.

Part of the estimated fiscal benefits calculation for Applications includes the estimated sales taxes paid by consumers of the product produced by the Project. Existing regulations provide that if an Applicant produces a Biofuel and uses a fraction of the Biofuel to operate the Facility, the estimated sales and use tax revenue will be reduced based on the fraction of the Applicant's Biofuel production that will offset external fuel purchases in order to more accurately estimate the sales tax revenue from this type of Project. However, the current regulations do not account for all Applicants that produce a product that does not generate sales tax revenue. Therefore, the proposed regulations provide that if the Applicant produces a product that does not generate sales tax revenue, the estimated increase in sales taxes will be reduced based on the fraction of production that does not generate sales tax revenue. The proposed amendment is necessary to determine the taxability of the product produced to more accurately calculate the Project's fiscal benefits.

Section 10032(c)(4)(B)(ik) is added to request the projected average number of employees at the facility, in full-time equivalents, assuming the Qualified Property is not utilized. AB 176 (Chapter 672, Statutes of 2019) requires CAEATFA to include in the Application evaluation criteria the extent to which a project will result in a loss of permanent, full-time jobs in California. Using the estimated number of employees assuming the Qualified Property is utilized, which is already provided in the Application in full-time equivalents, and new information on the projected number of employees assuming the Qualified Property is not utilized, the proposed regulations will determine if the project will result in a loss in jobs.

Section 10032(c)(4)(B)(i)l is added to request documentation on the minimum and average wage of full-time employees proposed to be hired or not retained. AB 176 (Chapter 672, Statutes of 2019) added to the Application evaluation criteria the average and minimum wage of full-time employees proposed to be hired or not retained. The proposed regulations ask for the minimum and average wage of each classification of full-time employees proposed to be hired or not retained using the following wage categories: up to \$20,000; \$20,001–\$30,000; \$30,001–\$40,000; \$40,001–\$50,000; \$50,001–60,000; \$60,001–\$70,000; \$70,001–\$80,000; \$80,001–\$90,000; \$90,001–100,000; \$100,001–\$110,000; \$110,001–\$120,000; and over \$120,000. The wages are requested in \$10,000 incremental bands based on stakeholder feedback and concerns over keeping data anonymized for employee confidentiality concerns and company trade secret concerns. Because some forms of compensation are provisional and amounts may be uncertain, particularly for new companies, wages include monetary compensation paid to the employee each year, not including tips, commissions, bonuses, stock options, overtime, or other compensation of any kind.

Section 10032(c)(4)(B)(i)k is added to request that Applicants provide an explanation for why a classification is being eliminated and if any existing employees in the classification will be retrained or reclassified. This information is requested based on stakeholder feedback and is necessary to provide a complete picture of why a classification of employee is being eliminated, such as for the overall health, safety, or environmental impact of the facility, and whether the elimination of a classification does not mean a loss in employment for affected employees.

Section 10032(c)(4)(C) is amended to specify that an Applicant is not to reduce the amount of Qualified Property listed in the Application to qualify for consideration under the Small Project Pool. This section is amended also to specify that an Applicant is not to increase the amount of Qualified Property listed in the Application if the total amount of sales and use tax exclusion requested in the application period for which the Application was submitted represents sales and use tax exclusion in excess of the Statutory Cap. Qualified Property amounts sometimes change during the review process for various reasons, such as: (1) including ineligible items, (2) incorrectly reporting costs, and (3) updating cost estimates. When Qualified Property amounts change, this can affect the amount of STE being requested from each pool and whether that pool is competitive, which in turn affects the order of Application review and Application review timeframes. The proposed amendments are necessary to help limit Qualified Property amount changes from extending the Application review time.

This section is also amended to specify good faith estimates are acceptable if specific property characteristics are not available at the time of submission of the Application and to make a grammatical correction to add clarity to Applicants as to the requirements for the Qualified Property list.

Section 10032(c)(4)(F) is amended to remove the provision that the optional supplemental information will not be used to adjust an Applicant's score if it already exceeds the established points threshold. This section is also amended to remove the

limitation that only Advanced Manufacturing Applicants may receive points for performing research and development in California, partnering with educational institutions, being part of an industry cluster, and providing benefits and fringe benefits to employees as the currently proposed factor. The proposed amendments also specify that eligible training opportunities include those for workers from disadvantaged communities. This section is also amended to request information on whether the Applicant provides benefits and fringe benefits to its employees. This section is also amended to fix a numbering error.

Existing regulations provide that Advanced Manufacturing Applicants can receive points for having a facility that performs research and development in California, partnering with educational institutions to train employees or potential future workers, and being part of an industry cluster. The proposed amendments are necessary to recognize the economic growth benefits of these factors and that they may apply to all types of Applicants, not just advanced manufacturers. Additionally, the proposed amendments in Section 10032(c)(4)(F)(ii) add more specificity to the types of training opportunities that qualify for the workforce partnership points to clarify that they include training opportunities for workers from disadvantaged communities, including women, racial minorities, formerly incarcerated, and veterans. The proposed amendments also remove the caveat that CAEATFA will not use these points to adjust an Applicant's score if it already exceeds the points-threshold requirement so that the CAEATFA Board has a full scope of the benefits of a project when reviewing an Application.

Section 10033(c)(5)(E)(i)d of the proposed regulations provides additional points to Applicants that provide benefits and fringe benefits to employees to recognize the economic benefits of providing jobs that include additional benefits to employees in the Application review; therefore, Section 10032(c)(4)(F)(ii)d is added so that Applicants may provide information on the benefits and fringe benefits provided to employees. The proposed regulations specify benefits include medical, health, dental, and vision premiums paid by the Applicant on behalf of an employee, an employee's spouse or an employee's dependents, and fringe benefits include, but are not limited to, bonuses, pension plans, retirement contributions, profit-sharing programs, dependent care and assistance reimbursement, transportation subsidies, education reimbursements, gym subsidies, employee discounts, and paid leave. These categories of benefits and fringe benefits provide examples and clarity on the types of benefits and fringe benefits eligible for points, and are consistent with other state incentives that consider benefits and fringe benefits provided to employees.

Section 10032(c)(4)(F)(iii) is amended to renumber (iv) to (iii) due to a previous numbering error.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on previous experience administering the Program, a consultant hired to assist with Program development to

develop the proposed regulations, and feedback from Program participants and stakeholders.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute.

Alternatives to the \$10,000 Wage Bands

The Authority considered asking for the exact minimum and average wages. However, the Authority received stakeholder feedback with concerns regarding employee confidentiality and company trade secrets. Some Applicants may have a few or even just one employee in a specific classification. To try to keep the wage information as detailed as possible while also providing some level of confidentiality and anonymization, the proposed regulations use \$10,000 wage bands.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. The proposed amendments are designed to streamline Program administration and the Application process, reducing the burden on Applicants and the Authority.

Section 10033. Eligibility Requirements and Application Evaluation.

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

Existing regulations require that Applicants provide a Legal Status Questionnaire but do not limit Applicants from eligibility for an STE award if there is a finding by the Occupational Safety and Health Administration that the Applicant is guilty of a willful violation, or a case against the Applicant under the Occupational Safety and Health Administration's Severe Violator Enforcement Program.

Current regulations reference the State Board of Equalization and should instead refer to the California Department of Tax and Fee Administration due to a change in statute. Part of the estimated fiscal benefits calculation for Applications includes the estimated sales taxes paid by consumers of the product produced by the Project. Existing regulations provide that if an Applicant produces a Biofuel and uses a fraction of the Biofuel to operate the Facility, the estimated sales and use tax revenue will be reduced based on the fraction of the Applicant's Biofuel production that will offset external fuel purchases in order to more accurately estimate the sales tax revenue from this type of Project. However, the current regulations do not account for all Applicants that produce a product that does not generate sales tax revenue.

Existing regulations require Applicants to score more than 20 environmental benefit points to receive a positive Staff recommendation. Existing regulations award Advanced Manufacturers 20 environmental benefit points for having an environmental sustainability plan that describes the Applicant's plans to reduce energy use or water use and reduce solid waste, hazardous waste, or air pollutant emissions at the Facility, and for making reductions in energy use, water use, solid waste, hazardous waste, air pollutant emissions, or emissions of other pollutants. Applicants with Facilities that make reductions by at least 5% relative to the baseline identified in the Application will receive five points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points. Therefore, Applicants can earn just as many points for having an environmental sustainability plan as they would earn for reducing energy use in their Facilities by 20%, for example.

Current regulations reference "TPB points" with regard to Advanced Manufacturing Applicants, but unlike Alternative Source, Advanced Transportation, and recycling Applications, Advanced Manufacturing Applications do not receive a TPB dollar amount calculation pursuant to Sections 10033(c)(3)(C) and (E). Instead, consistent with Section 10033(c)(3)(D), the environmental benefits calculation for Advanced Manufacturing projects is based on points assigned for having an environmental sustainability plan, and for reductions in energy use, waste generation, water use, or emissions of air pollutants in the manufacturing process relative to the baseline identified in the Application. This section is also amended to implement AB 176, which requires CAEATFA to consider the extent to which a Project will create new, or result in the loss of, permanent, full-time jobs in California.

Existing regulations provide that Advanced Manufacturing Applicants can receive 25 points for having a Facility that performs research and development in California, 25 points for partnerships with educational institutions to train employees or potential future workers, and 25 points for being part of an industry cluster. This section is amended to award these additional points to all types of Applicants to recognize the economic growth benefits of these factors and that they may apply to all types of Applicants, not just Advanced Manufacturers.

Current regulations do not account for the potential economic benefit of Applicants that provide benefits and fringe benefits to employees in the Application scoring.

This section is also amended to make several clarifying and technical changes.

2. Specific Purpose of the Regulation.

Section 10033(b) is amended to require that an Applicant's Legal Status Questionnaire disclosures not include a finding of guilty of a willful violation by the Occupational Safety and Health Administration or a case under the Occupational Safety and Health Administration's Severe Violator Enforcement Program to be eligible for an STE award. This section is also amended to reflect that the proposed amendments add another eligibility requirement that applies to the Applicant and not necessarily the Facility.

Section 10033(c)(1)(A)(iii) is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration.

Section 10033(c)(1)(G)(i)a is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration and to correct a typographical error. This section is also amended to specify that if an Application produces a product that does not generate sales tax revenue, the estimated increase in sales taxes will be reduced based on the fraction of production that does not generate sales tax revenue.

Section 10033(c)(1)(G)(i)d.i is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration.

Section 10033(c)(3)(D)(i)a is amended to reduce the points earned for having an environmental sustainability plan to five (5) points.

Section 10033(c)(4) is amended to remove the reference to TPB points with regard to Advanced Manufacturing Applicants. This section is also amended to correct the regulation section reference from Section 10033(c)(2)(D) to 10033(c)(3)(D).

Section 10033(c)(5)(A)(ii) is amended to correct the parentheses used in the formula.

Section 10033(c)(5)(B) is amended to implement AB 176, which requires CAEATFA to consider the extent to which a Project will create new, or result in the loss of, permanent, full-time jobs in California. The additional text in Section 10033(c)(5)(B)(i) is to help differentiate between points awarded as a result of creating new production-related jobs (New Jobs Score) and points deducted for a net loss in jobs due to the STE (Lost Jobs Points). Section 10033(c)(5)(B)(ii) determines if there would be a loss in jobs as a result of the Project, using the estimated number of employees assuming the Project is implemented, which is already provided in the Application, as well as the estimated number of employees assuming the Project is not implemented, as provided in the newly proposed Section 10032(c)(4)(B)(i)k. If there is a net loss in jobs, the proposed regulations provide that the Applicant will receive a New Jobs Score of zero and will lose points in the Application scoring (Lost Jobs Points). The Lost Jobs Points will be calculated based on the percent reduction in jobs as a result of the project by

(a) subtracting the total facility employment assuming the Qualified Property is not used from the total facility employment assuming the Qualified Property is used, (b) dividing the result by the total facility employment assuming the Qualified Property is used, and (c) multiplying the result by 100.

Section 10033(c)(5)(D) is amended to update the regulation section reference from (j) to (m).

Section 10033(c)(5)(E) is amended to remove the limitation that only Advanced Manufacturing Applicants may receive points for performing research and development in California, partnering with educational institutions, being part of an industry cluster, and providing benefits and fringe benefits to employees as the newly proposed factor. The proposed amendments also specify that training opportunities for future workers include workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans.

Section 10033(c)(5)(E)(i)d is added to award points to Applicants that provide benefits and fringe benefits. Applicants will receive five (5) points for each type of benefit or fringe benefit provided, up to 25 points.

Section 10033(c)(5)(F) is amended to renumber (G) to (F) due to a previous numbering error.

3. Necessity.

Section 10033(b) is amended to require that an Applicant's Legal Status Questionnaire disclosures not include a finding of guilty of a willful violation by the Occupational Safety and Health Administration or a case under the Occupational Safety and Health Administration's Severe Violator Enforcement Program to be eligible for an STE award. The proposed amendment is necessary to reflect that the severity of a willful violation or a case under the Occupational Safety and Health Administration's Severe Violator Enforcement Program run counter to the STE Program's purpose of promoting the creation of California-based manufacturing and jobs by making these Applicants ineligible for an STE award.

This section is also amended to reflect that the proposed amendments add another eligibility requirement that applies to the Applicant and not necessarily the Facility.

Section 10033(c)(1)(A)(iii) is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration due to a change in statute.

Section 10033(c)(1)(G)(i)a is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration due to a change in statute. This section is also amended to specify that if an Application produces a product that does not generate sales tax revenue, the estimated increase in sales taxes will

be reduced based on the fraction of production that does not generate sales tax revenue. This section is also amended to change an “and” to “an” to correct a typographical error.

Part of the estimated fiscal benefits calculation for Applications includes the estimated sales taxes paid by consumers of the product produced by the Project. Existing regulations provide that if an Applicant produces a Biofuel and uses a fraction of the Biofuel to operate the Facility, the estimated sales and use tax revenue will be reduced based on the fraction of the Applicant’s Biofuel production that will offset external fuel purchases in order to more accurately estimate the sales tax revenue from this type of Project. However, the current regulations do not account for all Applicants that produce a product that does not generate sales tax revenue. Therefore, the proposed regulations provide that if the Applicant produces a product that does not generate sales tax revenue, the estimated increase in sales taxes will be reduced based on the fraction of production that does not generate sales tax revenue. The proposed amendment is necessary to more accurately calculate the Project’s fiscal benefits.

Section 10033(c)(1)(G)(i)d.i is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration due to a change in statute.

Section 10033(c)(3)(D)(i)a. Existing regulations require Applicants to score more than 20 environmental benefit points to receive a positive Staff recommendation. Existing regulations award Advanced Manufacturers environmental benefit points for having an environmental sustainability plan that describes the Applicant’s plans to reduce energy use or water use and reduce solid waste, hazardous waste, or air pollutant emissions at the Facility, and for making reductions in energy use, water use, solid waste, hazardous waste, air pollutant emissions, or emissions of other pollutants. Applicants with Facilities that make reductions by at least 5% relative to the baseline identified in the Application will receive five points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points. Current regulations also award 20 points for having an environmental sustainability plan.

The proposed regulations reduce the points earned for having an environmental sustainability plan to five (5) points, which is necessary to better scale the points relative to the minimum point threshold of 21 points and the points earned for the Facility’s environmental impact reductions.

Section 10033(c)(4) is amended to remove the reference to TPB points with regard to Advanced Manufacturing Applicants. The proposed amendment is necessary to clarify that unlike Alternative Source, Advanced Transportation, and recycling Applications, Advanced Manufacturing Applications do not receive a TPB dollar amount calculation pursuant to Sections 10033(c)(3)(C) and (E). Instead, consistent with Section 10033(c)(3)(D), the environmental benefits calculation for Advanced Manufacturing Projects is based on points assigned for having an environmental sustainability plan, and for reductions in energy use, waste generation, water use, or emissions of air pollutions in the manufacturing process relative to the baseline identified in the Application.

This section is also amended to correct the regulation section reference from Section 10033(c)(2)(D) to 10033(c)(3)(D).

Section 10033(c)(5)(A)(ii) is amended to correct the parentheses used in the formula.

Section 10033(c)(5)(B). The proposed amendments are necessary to implement AB 176, which requires CAEATFA to consider the extent to which a Project will create new, or result in the loss of, permanent, full-time jobs in California.

Existing statute requires CAEATFA to consider the extent to which a project will create new, permanent jobs in California. To determine the extent to which the project will create new, permanent jobs in California in the STE Program's evaluation criteria, existing regulations ask for the estimated average number of production-related employees (in annual full-time equivalents) employed each year, averaged over the estimated useful lifespan of the Qualified Property, taking into account any ramp-up periods, as well as the estimated average number of construction employees (in annual full-time equivalents). The Application also asks for the estimated per-unit labor costs, assuming the Qualified Property is used. The STE Program's existing evaluation criteria in regulation uses this information (as well as other Application inputs) to calculate the estimated marginal increase in jobs (in full-time equivalents) as a result of the STE, and quantify the resulting estimated fiscal benefits as part of the fiscal benefits score. Applicants also earn points (in both competitive and regular scoring) based on the number of jobs per dollar of STE.

The additional text in Section 10033(c)(5)(B)(i) is necessary to help differentiate between points awarded as a result of creating new production-related jobs (New Jobs Score) and points deducted for a net loss in jobs due to the STE (Lost Jobs Points).

Section 10033(c)(5)(B)(ii) determines if there would be a loss in jobs as a result of the Project, using the estimated number of employees assuming the Project is implemented, which is already provided in the Application, as well as the estimated number of employees assuming the Project is not implemented, as provided in the newly proposed Section 10032(c)(4)(B)(i)k. If there is a net loss in jobs, the proposed regulations provide that the Applicant will receive a New Jobs Score of zero and will lose points in the Application scoring (Lost Jobs Points). The Lost Jobs Points will be calculated based on the percent reduction in jobs as a result of the Project by (a) subtracting the total facility employment assuming the Qualified Property is not used from the total facility employment assuming the Qualified Property is used, (b) dividing the result by the total facility employment assuming the Qualified Property is used, and (c) multiplying the result by 100.

Section 10033(c)(5)(D) is amended to update the regulation section reference from (j) to (m).

Section 10033(c)(5)(E) is amended to remove the limitation that only Advanced Manufacturing Applicants may receive points for performing research and development

in California, partnering with educational institutions, being part of an industry cluster, and providing benefits and fringe benefits to employees as the newly proposed factor. Existing regulations provide that Advanced Manufacturing Applicants can receive 25 points for having a Facility that performs research and development in California, 25 points for partnerships with educational institutions to train employees or potential future workers, and 25 points for being part of an industry cluster. The proposed amendments are necessary to recognize the economic growth benefits of these factors and that they may apply to all types of Applicants, not just Advanced Manufacturers. The proposed amendments also add more specificity with regard to the types of training opportunities eligible for additional points in order to add clarity about the types of potential workers for which the training opportunities could be offered in order to be eligible for points based on stakeholder feedback.

Section 10033(c)(5)(E)(i)d is added to award points to Applicants that provide benefits and fringe benefits. Applicants will receive five (5) points for each type of benefit or fringe benefit provided, up to 25 points, to recognize the benefits of providing additional benefits to employees in the Application review, while recognizing that the STE Program supports diverse industries, labor markets, and regional economies. Each benefit and fringe benefit provided is worth five (5) points to award more points to Applicants that provide more benefits and fringe benefits, and the points are capped at a total of 25 to scale the points consistent with the other Facility characteristics for which Applicants can earn additional points.

Section 10033(c)(5)(F) is amended to renumber (G) to (F) due to a previous numbering error.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on previous experience administering the Program, a consultant hired to assist with Program development to develop the proposed regulations, and feedback from Program participants and stakeholders.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute.

Alternatives to Proposed Implementation of AB 176

The Authority considered having Applicants indicate in the Application whether there will be a net reduction in jobs at the Facility resulting from the purchase and use of the Qualified Property. The Authority determined this would not provide sufficient information and was not consistent with the current Application evaluation methodology. Therefore, the proposed regulations request the number of employees assuming the Qualified Property is not utilized and uses this information, along with other Applicant-provided information already requested in existing regulations, to determine if there is a net loss in jobs. If there is a net loss in jobs, the proposed regulations provide that the Applicant will receive a New Jobs Score of zero and will lose points in the Application scoring (Lost Jobs Points). The proposed regulations also request, along with information on the average and minimum wage of each classification of full-time employees proposed to be hired or not retained, an explanation as to why a classification of employees is being eliminated and if any existing employees in the classification will be retained or reclassified to get a more complete picture as to why a classification of employees is being eliminated and if it will result in a loss of jobs based on stakeholder feedback.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. Participation in the Program is voluntary for eligible businesses; therefore, the regulations will not have an adverse impact on California businesses. In fact, the incentive provided by the Program is likely to have a positive effect on California businesses by reducing their capital purchasing costs.

Section 10034. Approval of Applications by the Authority

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

Section 10034(e)(2) contains an outdated statutory reference for the definition of “project.”

2. Specific Purpose of the Regulation.

Section 10034(e)(2) is amended to change the statutory reference from Public Resources Code Section 26003(a)(8) to Section 26011.8(b)(1).

3. Necessity.

This section is amended to update the statutory reference for the definition of “Project” as provided in Public Resources Code Section 26011.8(b)(1), as amended by AB 199 (Chapter 768, Statutes of 2015).

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on authorizing statute.

5. Alternatives to the Regulations Considered by the Agency and the Agency’s Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. The proposed amendment is technical.

Section 10035. Regulatory Agreement and Compliance.

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

Existing regulations require Applicants to use the STE award within three years, unless this term is extended by the CAEATFA Board upon a finding that it is in the public interest and advances the purposes of the STE Program. Additionally, Applicants must execute a Regulatory Agreement with CAEATFA that requires the Applicant to comply

with the requirements set forth in the STE Program regulations, including providing annual reports on the status of the approved Project. Previous regulations provided that the term of the Regulatory Agreement was equal to the longer of (a) three years or (b) one-half of the estimated useful lifespan of the longest-lived item of Qualified Property identified in the Application. However, previous regulations did not provide for extending the term of the Regulatory Agreement in the event the initial term to use the STE award was extended.

Since implementing the 15% purchase requirement in October 2016, when the first Applications under the new regulations were considered, CAEATFA has learned that many projects have significant lead-times for equipment purchases, with equipment sometimes not arriving and being paid for until six months to a year or more after a purchase order has been executed. Additionally, CAEATFA has seen the current COVID-19 pandemic affect purchase timeframes, financing, feedstock supply, revenue, construction, and operations for previously approved Applicants.

Additionally, this section is amended to update section references and references from the State Board of Equalization to the California Department of Tax and Fee Administration.

2. Specific Purpose of the Regulation.

Section 10035(a)(2) is amended to extend the term of Regulatory Agreement if the Applicant is granted an extension of the initial term to make Qualified Property purchases pursuant to Section 10035(b)(1)(B).

Section 10035(b)(1) is amended to extend the 15% purchase requirement timeframe from 12 months to 18 months, allow execution of purchase orders to count towards the 15%, and enable the CAEATFA Board to extend or waive the requirement upon a finding of extraordinary circumstances and that it is in the public interest and advances the purposes of the STE Program.

This section is also amended to renumber the previous Section 10035(b)(1)(A) to Section 10035(b)(1)(B).

Section 10035(b)(6) is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration.

3. Necessity.

Section 10035(a)(2) is amended to extend the term of Regulatory Agreement if the Applicant is granted an extension of the initial term to make Qualified Property purchases pursuant to Section 10035(b)(1)(B).

Current regulations do not provide for extending the term of the Regulatory Agreement in the event the initial term to use the STE award was extended. This reduces the amount of time an Applicant that receives an initial term extension reports annually on how the

project actually performs once complete and the equipment is in use, which is used to evaluate STE Program performance and effectiveness, and has occasionally resulted in Regulatory Agreement terms that are shorter than the initial term to use the STE award. Therefore, the proposed regulation provides that if an Applicant is granted an extension of the initial term to make Qualified Property purchases, the term of the Regulatory Agreement would be required to be extended for an equal amount of time.

Section 10035(b)(1) is amended to extend the 15% purchase requirement timeframe from 12 months to 18 months, allow execution of purchase orders to count towards the 15%, and enable the CAEATFA Board to extend or waive the requirement upon a finding of extraordinary circumstances and that it is in the public interest and advances the purposes of the STE Program. Since implementing the 15% purchase requirement in October 2016, when the first Applications under the new regulations were considered, CAEATFA has learned that many projects have significant lead-times for equipment purchases, with equipment sometimes not arriving and being paid for until six months to a year or more after a purchase order has been executed. The purpose of the 15% purchase requirement is to help maximize the STE Program's benefit to the state by encouraging Applicants to apply when they have more certainty of the Project's feasibility and likelihood of moving forward. Providing a standard 18-month timeframe and allowing purchase orders to count toward the 15% helps accommodate Projects with equipment purchases with long lead times while still encouraging Applicants not to apply too soon. Additionally, the execution of a purchase order also demonstrates an Applicant's intent and readiness to move forward and does not go against the purpose of the purchase requirement, which is to avoid Applicants from being approved but not moving forward with the Project.

The proposed regulations allow the CAEATFA Board to waive or extend the 15% purchase requirement upon a finding of extraordinary circumstances, which may include unforeseen permitting issues, and that doing so is in the public interest and advances the purposes of the STE Program. In 2019, two approved projects for a total of \$21 million in STE were from previously approved Applicants that did not meet the 15% purchase requirement. Additionally, CAEATFA has seen the current COVID-19 pandemic affect purchase timeframes, financing, feedstock supply, revenue, construction, and operations for previously approved Applicants. To help provide some additional flexibility for unforeseen circumstances, such as permitting delays and the unprecedented market impact of the COVID-19 pandemic, the proposed regulations give the CAEATFA Board the ability to consider requests for an extension of the timeframe. However, to help maintain the requirement's purpose of discouraging Applicants from applying before they are ready, the ability to waive is limited to extraordinary circumstances.

This section is also amended to renumber the previous Section 10035(b)(1)(A) to Section 10035(b)(1)(B) given the proposed new Section 10035(b)(1)(A).

Section 10035(b)(6) is amended to update the reference from the State Board of Equalization to the California Department of Tax and Fee Administration due to a change in statute.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on previous experience administering the Program.

5. Alternatives to the Regulations Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. The proposed amendments are designed to streamline Program administration and the Application process, reducing the burden on Applicants and the Authority.

Section 10036. Fees

1. Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.

Existing regulations require Applicants to pay an Application Fee to cover the costs of reviewing the Application. Current regulations provide that the Application Fee is not refundable unless an Application is not reviewed by Staff due to the STE Program being oversubscribed. Because the proposed regulations switch the STE Program to specific application periods that will enable CAEATFA to know whether the Program is oversubscribed before a subsequent application period, CAEATFA will no longer accept Applications if there is no STE available to award. Therefore, all Applications will at least be reviewed to determine basic eligibility (is it an eligible Project), completeness, and Competitive Criteria scores. Determining the Competitive Criteria score of an Application requires Staff to review the Qualified Property list, estimated number of employees, and production-related information provided in the Application, but the current Application Fee structure does not cover the cost of performing this initial review.

CAEATFA has determined a hard copy Application is no longer necessary, and, therefore, the Application Fee check will not be sent with the Application.

Existing regulations require approved Applicants to pay administrative fees to cover the costs associated with the ongoing administrative needs of the Program. Current regulations require Applicants to pay a \$500 fee for modifications to awards (e.g., name changes, award transfers, and extensions of the initial term to purchase all Qualified Property). However, since implementing the fee, CAEATFA has determined that the fee does not accurately reflect the reasonable number of Staff hours spent processing requests to extend the initial term or the 15% purchase timeframe and does not account for the reasonable number of Staff hours associated with the additional years of reporting and administration of the award. Current regulations also do not specify when the fees are due to CAEATFA.

The proposed amendments also make clarifying changes in order to make clear how the Administrative Fee is paid and fix a capitalization error.

2. Specific Purpose of the Regulation.

Section 10036(a)(3) is amended to remove the requirement that hard copy Applications be submitted with the Application by mail and to specify the Application Fee must be received within five business days of the submission of the Application.

Section 10036(a)(4) is amended to provide that the Application Fee is not refundable except if the Application is (1) reviewed only to determine its Competitive Criteria ranking and (2) not fully reviewed by Staff due to the Applicant's Competitive Criteria ranking and the oversubscription of the Statutory Cap, in which case 75% of the Application Fee will be refunded.

Section 10036(b)(5) is amended to clarify the Administrative Fee due with each semi-annual report is calculated based on the Qualified Property amount purchased during the reporting period until the total Administrative Fee has been paid.

Section 10036(b)(5)(A) is amended to fix the unnecessary capitalization of the word "fee."

Section 10036(c)(1) is amended to increase the administrative fee from \$500 to \$1,500 for requests to extend the 15% purchase requirement timeframe and to \$2,000 for requests to extend the three-year initial term for Applicants to use the STE award. The proposed regulations also increase the fee to \$2,250 if an Applicant requests an extension of the 15% purchase requirement timeframe and the three-year initial term for consideration at the same CAEATFA Board meeting.

Section 10036(c)(3) is amended to specify that the other administrative fees shall be received by the Authority within five (5) business days of the submission of the request.

3. Necessity

Section 10036(a)(3) is amended to remove the requirement that hard copy Applications be submitted with the Application Fee by mail. Because the proposed amendments will require only an electronic version of the Application, the Application Fee must be submitted to the CAEATFA office separately. Therefore, the proposed amendment to Section 10036(a)(3) specifies the Application Fee must be received within five business days of the submission of the application, consistent with the previous requirement that the hard copy Application and Application Fee must be received within five business days under the previous version of regulation Section 10032(a)(2).

Section 10036(a)(4). Because the proposed regulations switch the STE Program to specific application periods that will enable CAEATFA to know whether the Program is oversubscribed before a subsequent application period, CAEATFA will no longer accept Applications if there is no STE available to award. Therefore, all Applications will at least be reviewed to determine basic eligibility (is it an eligible Project), completeness, and Competitive Criteria scores. Determining the Competitive Criteria score of an Application requires Staff to review the Qualified Property list, estimated number of employees, and production-related information provided in the Application. To reflect the amount of time spent on this initial review of the Application, the proposed regulations provide that 75% of the Application Fee will be refunded if the Application is (1) reviewed to only determine its Competitive Criteria ranking, and (2) not fully reviewed by Staff due to the Applicant's Competitive Criteria ranking and the oversubscription of the statutory cap. The proposed modifications are necessary to cover the standard costs for staff to complete this initial review of the Application.

Section 10036(b)(5) is amended to clarify how administrative fees paid to CAEATFA on a semi-annual basis are applied. Existing regulations provide that the total amount of the administrative fee paid by approved Applicants is .004 of the total amount of Qualified Property actually purchased during the term of the award, with a minimum of \$15,000 and maximum of \$350,000. Pursuant to regulation Section 10036(b)(4), the minimum \$15,000 administrative fee is due upon the execution of the Regulatory Agreement, and pursuant to Section 10036(b)(6), this initial administrative fee is credited at the back-end. The amendment to Section 10036(b)(5) is necessary to clarify the administrative fee due with each semi-annual report is calculated based on the Qualified Property amount purchased during the reporting period until the total administrative fee has been paid, consistent with the rest of the provisions of Section 10036(b).

Section 10036(b)(5)(A) is amended to fix the unnecessary capitalization of the word "fee" as it has not been defined.

Section 10036(c)(1) is amended to increase the fee required for requests to extend the initial term and 15% purchase requirement timeframe. CAEATFA has determined that the current \$500 fee does not accurately reflect the reasonable number of Staff hours spent processing requests to extend the initial term or the 15% purchase timeframe and

does not account for the reasonable number of Staff hours associated with the additional years of reporting and administration of the award.

Therefore, the proposed regulations increase the fee to \$1,500 for requests to extend the 15% purchase requirement timeframe and to \$2,000 for requests to extend the three-year initial term for Applicants to use the STE award. The proposed regulations also increase the fee to \$2,250 if an Applicant requests an extension of the 15% purchase requirement timeframe and the three-year initial term for consideration at the same CAEATFA Board meeting to reflect the additional Staff time relative to a request only to extend either the 15% purchase requirement timeframe or the initial term.

The proposed amendments are necessary to cover the costs of processing these requests and for the reasonable number of Staff hours associated with the additional years of reporting and administration of the award.

10036(c)(3) – this section is amended to specify that the other administrative fees shall be received by the Authority within five (5) business days of the submission of the request. This amendment is necessary to ensure the fee is received within a reasonable amount of time to begin processing the request, which can be time sensitive. A five (5)-day deadline is consistent with the deadline to submit the Application Fee and was determined based on CAEATFA’s experience administering the Program.

4. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.

The Authority did not rely on any technical, theoretical, or empirical studies in proposing the adoption of this regulation. The Authority relied on previous experience administering the Program.

5. Alternatives to the Regulations Considered by the Agency and the Agency’s Reasons for Rejecting Those Alternatives.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small business.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

The Authority has determined that there will be no significant adverse economic impact on any California businesses. The additional fees proposed in these regulations are to cover the ongoing costs of administration, which is necessary to accommodate the increased scope of work under the Program and comply with CAEATFA's current budget projections. Participation in the Program is voluntary for eligible businesses; therefore, the regulations will not have an adverse impact on California businesses. In fact, the incentive provided by the Program is likely to have a positive effect on California businesses by reducing their capital purchasing costs, and the fee structure is designed so that the incentive exceeds the cost of participation.